

KARL HEINZ SCHOBER

IBLA 74-260

Decided August 21, 1974

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 37821-C.

Reversed.

Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

Where appellant mailed rental payment for oil and gas lease in sufficient time for it to arrive in the proper BLM office on or before the due date, the lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) as the failure to pay the rental timely is "not due to a lack of reasonable diligence on the part of the lessee."

Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

Where appellant mailed oil and gas lease rental payment, due on March 1, from Los Angeles, California, on February 27 to Cheyenne, Wyoming Office, late payment was not due to a lack of reasonable diligence on appellant's part.

APPEARANCES: Karl Heinz Schober, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Karl Heinz Schober appealed from a decision of the Bureau of Land Management State Office in Cheyenne, Wyoming, dated March 29, 1974, denying a petition for reinstatement of his oil and gas lease

W 37821-C, which terminated by operation of law for failure to pay the annual rental on or before March 1, 1974, the anniversary date of the lease.

Appellant mailed the rental payment in an envelope postmarked February 27, 1974, p.m., although it did not reach the Bureau of Land Management in Cheyenne until March 4, 1974, a Monday. ^{1/} The Bureau informed the appellant by notice dated March 5, 1974, that his lease had terminated, whereupon he filed his petition for reinstatement on March 15, 1974. We note that appellant signed the return receipt for the Bureau's termination notice on March 13, 1974; that his request for reinstatement was dated the same day; and that it was received in the State Office on March 15, 1974, at 10:00 a.m. Furthermore, we have been verbally informed by the United States Postal Service in Washington, D.C., that a letter mailed in Los Angeles, California, in the p.m. of February 27 would normally be delivered in Cheyenne, Wyoming, by March 1.

Having considered the distance involved and the normal delays attendant upon collection, transmittal, and delivery of mail, we are of the opinion that appellant mailed his payment in sufficient time for it to have arrived in the State Office on the due date, but that for unexplained reasons the payment was delivered late. Therefore, we conclude that appellant's case comes within the ambit of provisions in 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) for reinstatement where failure to pay timely is "not due to a lack of reasonable diligence on the part of the lessee." R. G. Price, 8 IBLA 290 (1972). In fact, Price involved almost identical facts as in the instant case, as payment sent from Los Angeles, California, to Cheyenne, Wyoming, was postmarked two days prior to the due date but was received one day late. Cf. Eason Oil Company, 16 IBLA 109 (1974); Inexco Oil Company, 15 IBLA 422 (1974); Sharon Rae Cook, 15 IBLA 424 (1974). ^{2/}

^{1/} Appellant asserts that the payment was mailed on February 26, and his check bears that date. However, the envelope bears the February 27 postmark, which we will assume is accurate in this instance.

^{2/} Appellant states that his records show the assignment of the lease was approved effective April 1, rather than March 1. It is the anniversary date of the issuance of the lease, i.e., March 1, that is the rental due date, not the date of approval of the assignment.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Wyoming State Office decision is reversed and the case is remanded to the Bureau of Land Management for appropriate action consistent with this decision.

Anne Poindexter Lewis
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

